names a beneficiary within the permitted class, but charges this beneficiary with a trust to hold the proceeds of the policy for one outside the class. In Massachusetts the rule is that the next of kin, who would have been entitled in case no beneficiary were named, is entitled to the proceeds of the policy. *O'Brien* v. *Mass. Cath. Order of Foresters,* 220 Mass. 79. *Kerr* v. *Crane,* 212 Mass. 224, seems to decide that the intended beneficiary outside the class is entitled, but this is explained in the *O'Brien* case, *supra,* by the fact that the next of kin intervened in favor of the intended beneficiary. In some jurisdictions it has been held that the defense is one purely personal with the insurer. If the insurer does not object, the intended beneficiary is entitled to the proceeds of the policy. *Meyers* v. *Schumann,* 54 N. J. Eq. 414. In a suit by the intended beneficiary against the named beneficiary, who agreed to hold in trust, the general rule is that the intended beneficiary will prevail. 40 L. R. A. (n. s.) 692, note and cases cited. But equity should do complete justice, and although the suit is only one between the intended beneficiary and the named beneficiary, the outcome should not be different than if all parties were joined. The prohibition against naming certain classes of persons as beneficiaries was adopted by the insurance company for a purpose, and the insured assented to this when he took out the policy. Should not a court of equity declare that an attempt to evade this prohibition is void and give the proceeds of the policy to the next of kin or to such persons as would have been entitled if no beneficiary were named?

WATERS AND WATER COURSES—EFFECT OF DESERT LAND ACT.—The Act of March 3, 1877, generally known as the Desert Land Act, provides for the sale of desert lands to persons who agree to irrigate and cultivate such lands. The act defines desert lands as lands which will not, without some irrigation, produce crops, and provides that the Commissioner of the General Land Office shall determine what may be considered as such lands; it provides also that the right to the use of water on such lands shall depend upon appropriation, and continues as follows: "and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands * * * shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes, subject to existing rights." Defendants were appropriators of water from Spearfish Creek, and plaintiffs (apparently since March 3, 1877) had acquired title to lands bordering on that stream; defendants diverted all the water in the stream during a dry summer, in order to satisfy their appropriations, and plaintiffs brought an action to determine their riparian rights. It did not appear that either the riparian lands of plaintiffs or the lands on which the defendants used the appropriated water had been obtained under the Desert Land Act. *Held,* that no riparian rights exist in connection with any public lands granted by the government after the passage of the Desert Land Act. *Cook et al.* v. *Evans et al.* (S. D., 1921), 185 N. W. 262.

In a similar case in California appropriators sued to prevent the use

of water by upper riparian owners who had obtained title from the government after 1877. *Held,* that as defendants' title was not obtained under the Desert Land Act, that act did not apply, and defendants could use the water as riparian owners. *San Joaquin & Kings River Canal & Irrigation Co., Inc.,* v. *Worswick et al.* (Cal., 1922), 203 Pac. 999.

The opposed views of the two cases reflect the condition of the previous decisions on this point. In *Hough* v. *Porter,* 51 Ore. 318, which is cited in both cases and followed by the South Dakota court, the supreme court of Oregon held that all lands settled upon after March 3, 1877, "were accepted with the implied understanding that the first to appropriate and use the water for the purposes specified in the act should have the superior right thereto." On the other hand, the supreme court of Washington, in *Stiil* v. *Palouse Irrigation & Power Co.,* 64 Wash. 606, held that the provisions of the statute applied only to desert lands as defined therein, and did not apply to lands (or to streams thereon) title to which was obtained from the government under other statutes. Both decisions have been followed and affirmed by later cases in the same jurisdictions. There is no actual authority in the United States courts. *Winters* v. *U. S.,* 143 Fed. 740, though sometimes cited as opposed to *Hough* v. *Porter, supra,* is decided on another ground. In *Boguvillas Land & Cattle Co.* v. *Curtis,* 213 U. S. 339, the court finds it unnecessary to decide the question raised in the two principal cases, but refers to the decision in *Hough* v. *Porter, supra,* as being based on "plausible grounds." As to the text writers, Mr. Kinney (Sec. 817) criticises *Hough* v. *Porter,* while Mr. Wiel (Secs. 128-130) merely refers to the doctrine of that case as "a new phase of the law," and Mr. Long (Sec. 306) rather hazily inclines to Mr. Kinney's views. It seems clear that the question is still an open one.

WORKMEN'S COMPENSATION ACTS—INJURIES RECEIVED WHILE ACTING IN AN EMERGENCY AS "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT."—The plaintiff's intestate, employed as a gardener by the defendant company, was severely injured while attempting to stop a team of horses which had run away from the defendant's receiving platform near which he had been working. The team belonged to a drayman who had been delivering goods to the defendant company at the receiving platform, which was located within the latter's grounds. *Held,* an injury "arising out of and in the course of employment." *Sebo* v. *Libby, McNeil & Libby* (Mich., 1921), 185 N. W. 702.

The plaintiff, a chambermaid, after retiring to her room in the hotel for the night, lighted an alcohol lamp with which to heat a curling iron. After she had finished curling her hair she left the room momentarily, and on returning discovered that the lamp had started a fire. In extinguishing the fire she was severely burned. The chambermaids had been expressly forbidden to use lamps like the one in question. *Held,* an injury "arising out of and in the course of employment." *Kraft* v. *West Hotel Co.* (Ia., 1921), 185 N. W. 895.